U.S. BANKRUPTCY OVERVIEW: CHAPTER 11 VOLUNTARY REORGANIZATION

Stages

Zone of Insolvency ⟷ Claw-Back Period

- Any time prior to bankruptcy filing: **Zone of Insolvency**
- Two years prior to bankruptcy filing: **Fraudulent Conveyances**
- One year prior to bankruptcy filing: **Insider Preferences**
- 90 days prior to bankruptcy filing: **Non-insider Preferences**

Pre-Filing Period

- Within 30 days of bankruptcy filing: **Lender Arrangements** → **Internal Preparation**

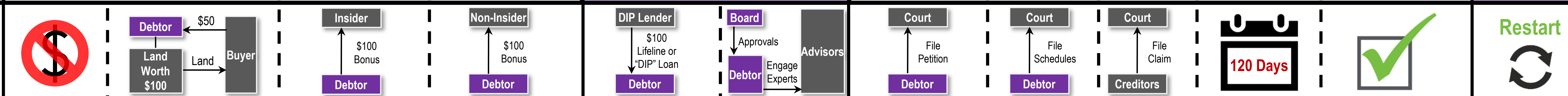
Bankruptcy Period

- Bankruptcy filing date: **File Bankruptcy Petition**
- 15 days after bankruptcy filing: **File Schedules; Assume/Reject Contracts**
- 100 days after bankruptcy filing: **Claim Deadline**
- 120 days after bankruptcy filing: **File Reorganization Plan**
- 180 days after bankruptcy filing: **Court Confirmation; Creditor Voting**

Post-Bankruptcy

- **Emerge from Bankruptcy**

Illustration



Bankruptcy Court

3 Fraudulent Conveyances
A bankruptcy court has the power to avoid fraudulent transfers of property. A fraudulent transfer occurs when (a) a debtor transfers property to, or incurs an obligation to, a third-party; and (b) either the transfer is made (i) with the intent to hinder or defraud creditors or (ii) for less than the reasonably equivalent value and the debtor is financially stressed.

4 Claw-Back of Preferential Payments to Insiders
Preferential payments to insiders (e.g., executives, relatives, and related parties) within one year prior to filing for bankruptcy may be clawed back. Preferential payments result in the insider receiving more than they would receive after a company liquidation.

5 Claw-Back of Preferential Payments to Non-Insiders
Preferential payments to non-insiders within 90 days prior to filing for bankruptcy may be clawed back. Preferential payments result in the non-insider receiving more than they would receive after a company liquidation.

16 Court Approval of Plan
A reorganization plan must be confirmed by the court before it becomes effective. As discussed in Box 17 below, there are two ways for the court to approve the plan: (1) the "acceptance method," and (2) the "cram down method."

Debtor

1 Insolvency
A company is insolvent when its liabilities exceed its assets, or it is unable to pay its debts as they come due. The company is in the zone of insolvency when it is approaching this point.

2 Restructuring Analysis
A company in the zone of insolvency should retain an independent restructuring firm. to determine whether a bankruptcy filing is in the best interests of the company and its stakeholders.

6 Pre-Arranged Plan
Prior to voluntarily filing for bankruptcy reorganization, the company will begin discussions with major creditors to obtain their support of a reorganization plan. Pre-arranged plans allow the company to (a) announce to the world (particularly its employees) that the restructuring will follow an orderly process and major creditors are supportive; and (b) obtain greater latitude in bankruptcy courts because the major creditors are in support of the reorganization plan. A pre-arranged plan (also known as a freefall bankruptcy) is more customary than a pre-packaged reorganization plan, which requires (a) the formal approval of all creditor groups. Because negotiations must be concluded with all credit groups, pre-packaged plans take much longer to finalize.

8 Internal Preparation
During the 30-day period prior to the bankruptcy filing, the company (a) engages advisors; (b) develops its strategy for obtaining stakeholders' approvals, (c) develops external and internal communication plans; (d) obtains all information (e.g., names of vendors and details of all employee compensation benefits) to be included in the disclosure schedules attached to the bankruptcy petition; (e) finalizes DIP financing arrangements; (f) seeks board of directors approval; and (g) circulates pre-filing notices to the bankruptcy court, creditors, and vendors as required.

9 Bankruptcy Filing
Company files its petition with a US bankruptcy court for bankruptcy protection in order to obtain a "breathing spell" (called an automatic stay) from its creditors while it reorganizes. Under the automatic stay, subject to limited exceptions, creditors must cease all collection efforts (e.g., lawsuits) upon commencement of a bankruptcy filing.

10 Operations
During bankruptcy, the debtor may (a) operate its business; (b) use, sell, or lease property; (c) obtain or incur unsecured debt in the ordinary course of business without court approval (or, if outside the ordinary course of business, with court approval).

12 Schedules
The debtor must prepare and file with the bankruptcy court numerous schedules relating to its creditors, business, operations, contracts, capital structure, subsidiaries, etc. As these schedules are voluminous, debtors often request extensions of time to file, and these requests are usually granted.

13 Assume/Reject Contracts
A benefit of the bankruptcy process for the debtor is the ability to reject (or assume – i.e., continue) contracts that are unfavorable. However, the debtor can only do so if the contract is an unexpired lease or an "executory contract" (i.e., a contract where obligations remain on both sides other than the payment of money). The assumption/rejection of contracts must occur before the reorganization plan is approved by the court.

14 Claim Deadline
If a creditor disputes the debtor's characterization of the amount owed in the debtor's proposed plan of reorganization, a creditor must file a proof of claim by this deadline (also known as the "bar date"). The claim deadline is set by the court and is usually no earlier than the 100th day after filing the bankruptcy petition.

15 Reorganization Plan
The debtor has the exclusive right for 120 days after filing its petition to file a reorganization plan. The plan sets forth the debtor's new capital structure, and it designates different classes of claims (i.e., creditors) and interests (i.e., equity holders). The plan may propose altering the rights of creditors and equity holders (e.g., propose that claims and interests be reduced, the conversion of unsecured creditors to equity holders, the sale of assets, or the like). The debtor must furnish the creditors and equity holders with a disclosure statement that contains adequate information about the proposed plan (and may be functionally similar to a prospectus). The court must approve the disclosure statement before it is distributed. This date is generally extended far beyond the 120-day period.

18 Discharge
Confirmation of the reorganization plan by the bankruptcy court discharges all pre-petition debt of the debtor and replaces it with the new debt obligations under the plan. The plan is binding on all parties.

Creditors

7 "DIP" Financing
Prior to voluntarily filing for bankruptcy reorganization, the company must begin discussions with potential lenders of debtor-in-possession ("DIP") financing. This financing will enable the company to fund its operations while it reorganizes.

17 Stakeholder Voting
After the reorganization plan is proposed by the debtor, but prior to confirmation by court, the creditors and equity holders vote, by class, to accept or dissent from the plan. Under the acceptance method, the court will confirm the plan if either (1) all impaired creditor classes accept the plan or (2) there are no impaired creditor classes. If any impaired creditor class dissents, then the cram down method applies. It provides that a dissenting creditor class will be forced to accept the plan, so long as the plan (a) does not unfairly discriminate, and (b) is fair and equitable. The plan discriminates if another class of equal rank in priority would unjustifiably receive greater value under the plan than the dissenting class. The plan is deemed fair and equitable to an impaired class of unsecured creditors or equity holders if no class below receives anything in the plan (the "absolute priority rule").

Shareholders

11 Stock Exchange De-Listing
The New York Stock Exchange and other securities exchanges may de-list a company that announces an intention to file for bankruptcy.